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88-260

No. _____

Supreme Court, U.S.

FILED

AUG 10 1988

JOSEPH F. SPANIOLO, JR.
CLERK

**IN THE SUPREME COURT
OF THE UNITED STATES
OF AMERICA**

October Term, 1988

**IN RE EUGENE H. DAVIS; PETITIONER
IN PROPRIA PERSONA**

on a Writ of Prohibition to the United
States District Court of the District
of Arizona, Tucson,
Judge Alfredo C. Marquez presiding;
Ninth Circuit Judges, Kilkenny, Sneed
and O'Scannlain; Respondents

**APPENDIX TO THE PETITION FOR A WRIT OF
PROHIBITION AND WRIT OF ERROR**

Eugene H. Davis
7447 N. Camino De Oeste
Tucson, County of Pima
1st Judicial District (1909)
Republic of Arizona



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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

No. CR-86-207-IUC-ACM

DEFENDANT: EUGENE H. DAVIS

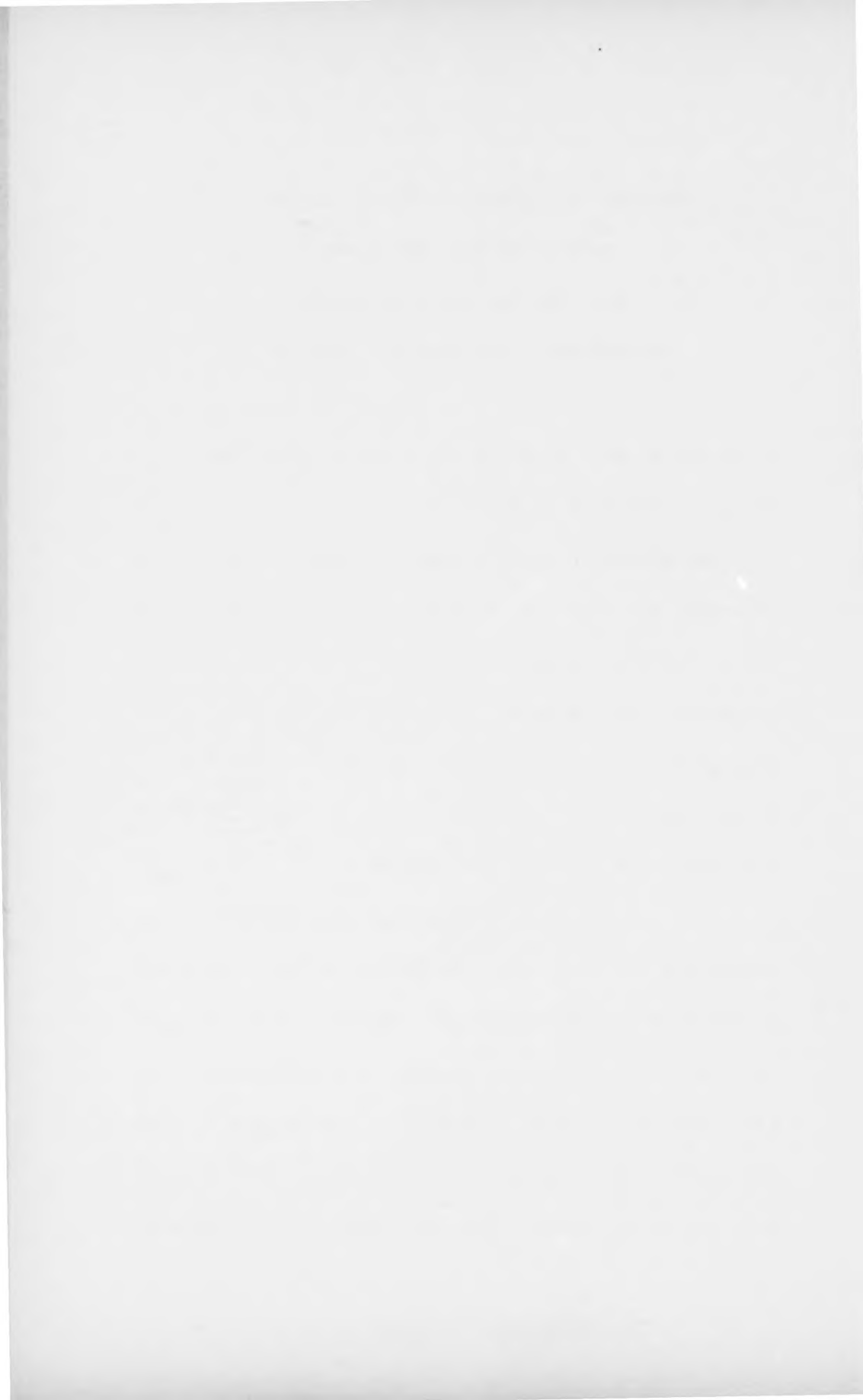
WITH COUNSEL: Eugene H. Davis, Pro Per

GUILTY: Counts 1-3

Defendant has been convicted as charged of the offenses of violating Title 26, United States Code, Section 7201, attempt to evade and defeat tax, as charged in Counts 1-3 of the Indictment filed herein.

SENTENCE OR PROBATION ORDER:

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The Defendant is hereby



committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two years on Count 1.

Imposition of the sentence is hereby suspended and the defendant is placed on probation for a period of five (5) years on each of Counts 2 and 3. Probationary terms imposed to run or be served concurrently with each other and to commence immediately.

SPECIAL CONDITIONS OF PROBATION:

IT IS FURTHER ORDERED that a special assessment of \$50.00 is hereby imposed on Counts 1, 2 & 3. Total Assessment: \$150.00.

Additional conditions of probation is that the defendant comply with all the filing requirements past and future of the Internal Revenue Service; special condition of probation is that the defendant investigate the possibility of



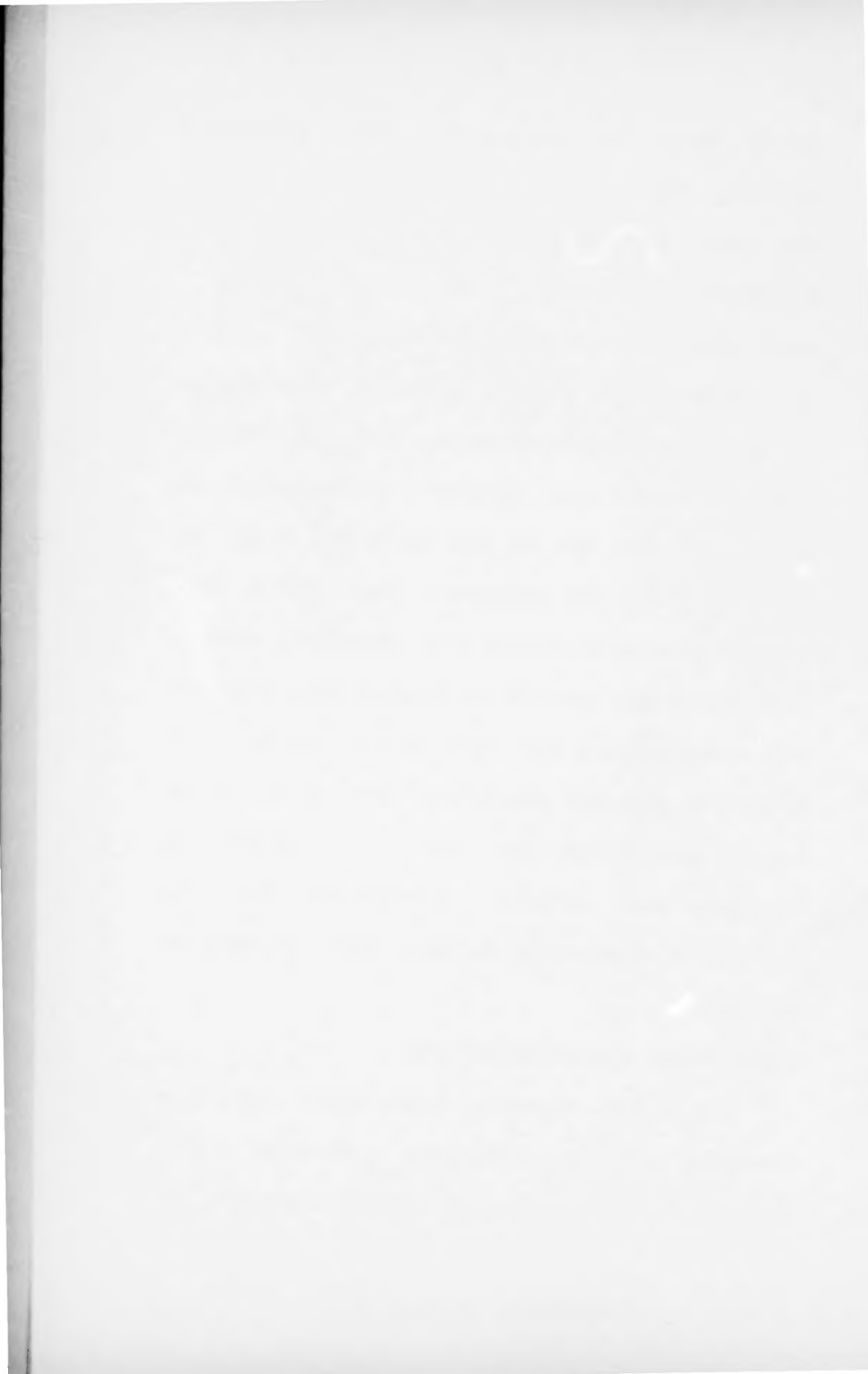
going back to work for the Southern Pacific Railroad or with any other employer and to complete the proper documents.

ADDITIONAL CONDITIONS OF PROBATION:

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION:

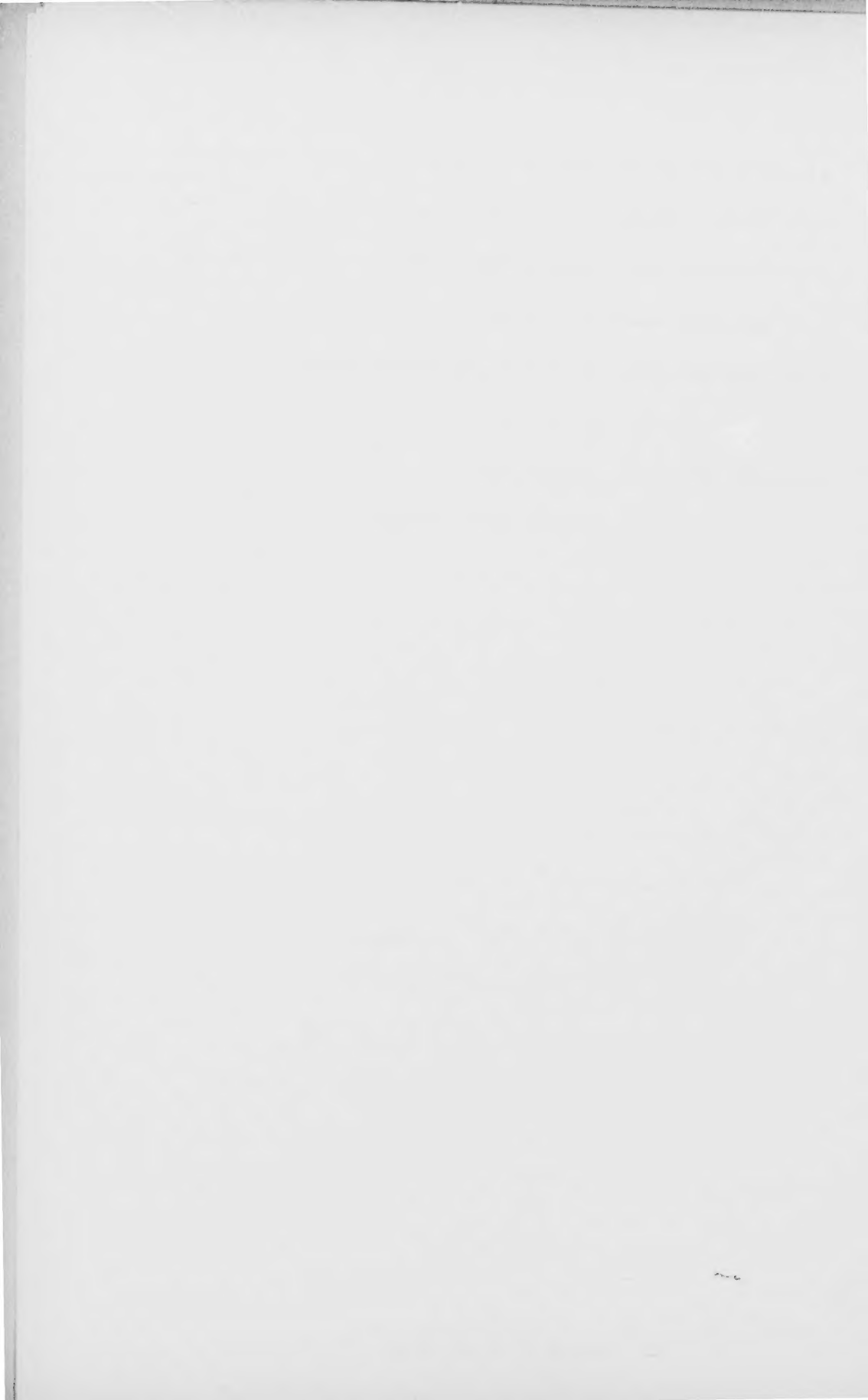
The court orders commitment to the custody of the Attorney General and recommends, that the sentence imposed is



stayed pending the outcome of any appeal in this case. Defendant is to be supervised by probation officer pending and appeal and to obey all requirements of the probation officer in this case.

SIGNED BY: A.C. Marquez

U.S. District Judge



NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)

Plaintiff - Appellee,) C.A.No.87-1056

v.)

EUGENE H. DAVIS,) D.C. No. 86-

Defendant - Appellant.) 207-TUC-ACM

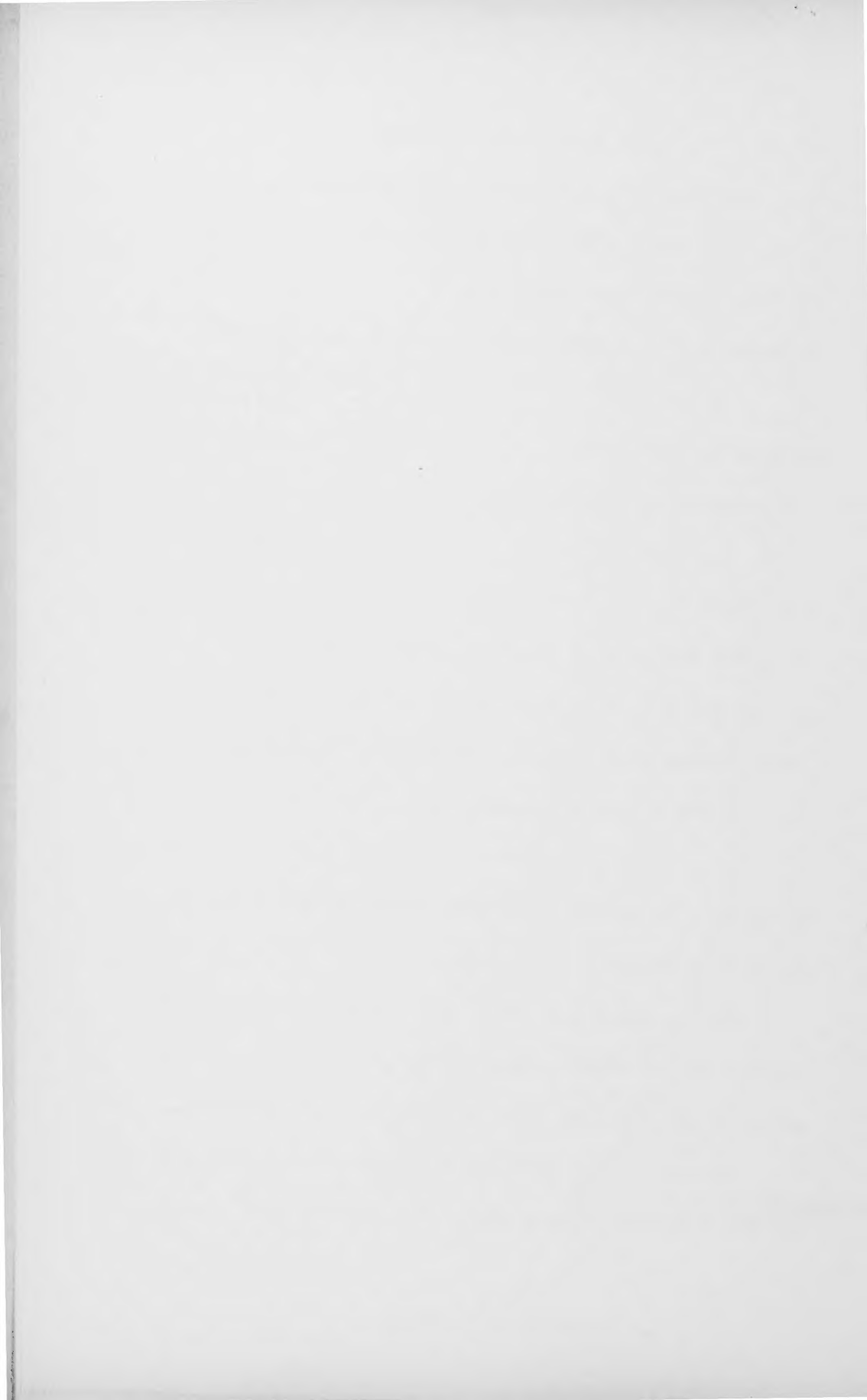
) MEMORANDUM *

Appeal from the United States District
Court for the District of Arizona,
Honorable Alfredo C. Marquis, Presiding
Submitted November 27, 1987 **

Before: KILKENNY, SNEED and O'SCANNLAIN,
Circuit Judges.

Davis appeals pro se his conviction
under 26 U.S.C. Section 7201 of three
counts of income tax evasion. We affirm.

Davis first contends that the district
court lacked personal jurisdiction over



him because (1) he is a sovereign individual by birth; (2) the fourteenth amendment is unconstitutional; and (3) the district court failed to meet its burden of showing that it had jurisdiction over him. We review de novo. Federal Deposit Ins. Corp. v. British-American Ins. Co., 828 F.2d 1439, 1441 (CA9 1987).

* This disposition is not appropriate for publication and may not be cited to or by the courts of this Circuit except as provided by CA9 Rule 36-3.

** The panel unanimously agrees that this case is appropriate for submission without oral argument per FRAP 34(a) and CA9 Rule 34-4.

A "sovereign individual" is subject to the provisions of the Internal Revenue Code. See United States v. Studley, 783 F.2d 934, 937 (CA9 1986). Moreover, Davis's contention that the fourteenth amendment to the Constitution of the United States is unconstitutional is ludicrous on its face. Finally, federal district courts have original and exclusive jurisdiction



over "all offenses against the laws of the United States(,]" 18 U.S.C. Section 3231; this includes violations of the Internal Revenue Code. Studley, 783 F2d at 937.

Davis also argues that the prosecutor lied to the grand jury by falsely stating that Davis was a "taxpayer" and not a "sovereign individual by birth." We review : de novo allegations of prosecutorial misconduct before a grand jury. United States v. De Rosa, 783 F.2d 1401, 1404 (CA9), cert. denied, ___ U.S.

, 106 S.Ct. 3282 (1986).

Davis's argument is frivolous. Because Davis is subject to the provisions of the Internal Revenue Code, see Studley, 783 F2d at 939, the prosecutor's remarks were correct.

The appellee has asked for two things on this appeal: that part of Davis's opening brief be stricken as scurrilous; and that sanctions be imposed for filing a



frivolous appeal.

The argument beginning at the bottom of page 13 of Davis's opening brief and continuing through to the top of page 21 is not only rambling and irrelevant to the legal issues raised in the first half of his brief, but its extremely radical theories with respect to religion also are entirely inappropriate in a formal pleading.

As to the request for sanctions, we do not find this to be an appropriate case for the imposition of damages for filing a frivolous appeal.

Accordingly, appellee's motion to strike that portion of Davis's opening brief beginning at the bottom of page 13 and continuing through to the top of page 21 is GRANTED. The request for sanctions is DENIED. The judgment of conviction is AFFIRMED.



(s) NOT SIGNED .

UNITED STATES COURT OF APPEALS

For the Ninth Circuit

UNITED STATES OF AMERICA,)

Plaintiff-Appellee,) CA NO.87-1056

v.) DC NO. CR-86

EUGENE H. DAVIS,)

Defendant-Appellant.)

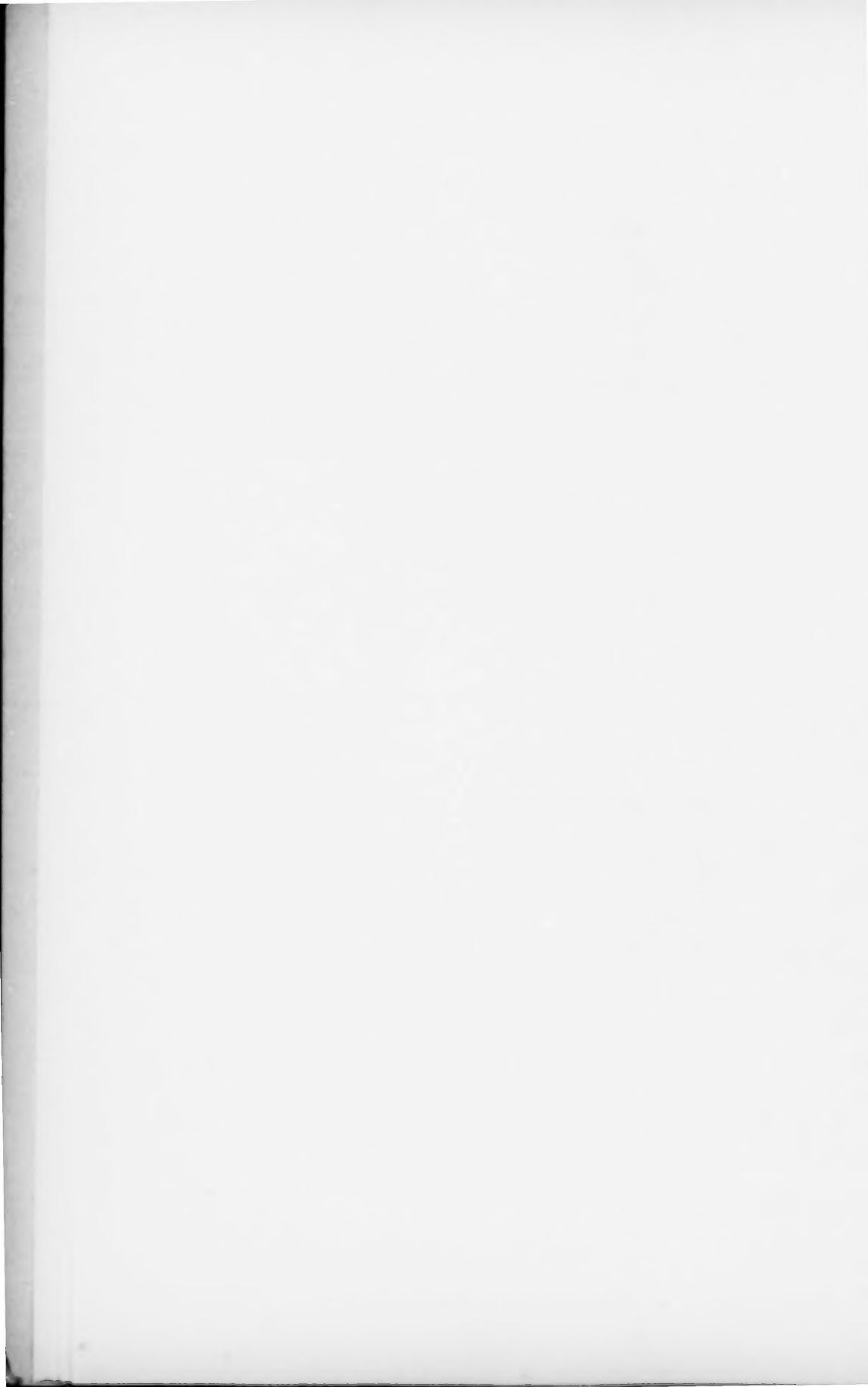
APPEAL from the United States District
Court for the District of Arizona
(Tucson).

THIS CAUSE came on to be heard on the
Transcript of the Record from the United
States District Court for the District of
Arizona, and was duly submitted.



ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered February 10, 1988



UNITED STATES OF AMERICA

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)

Appellee,

) C.A.No.87-1056

v.

)

EUGENE H. DAVIS,

) D.C. No. 86-

Appellant.

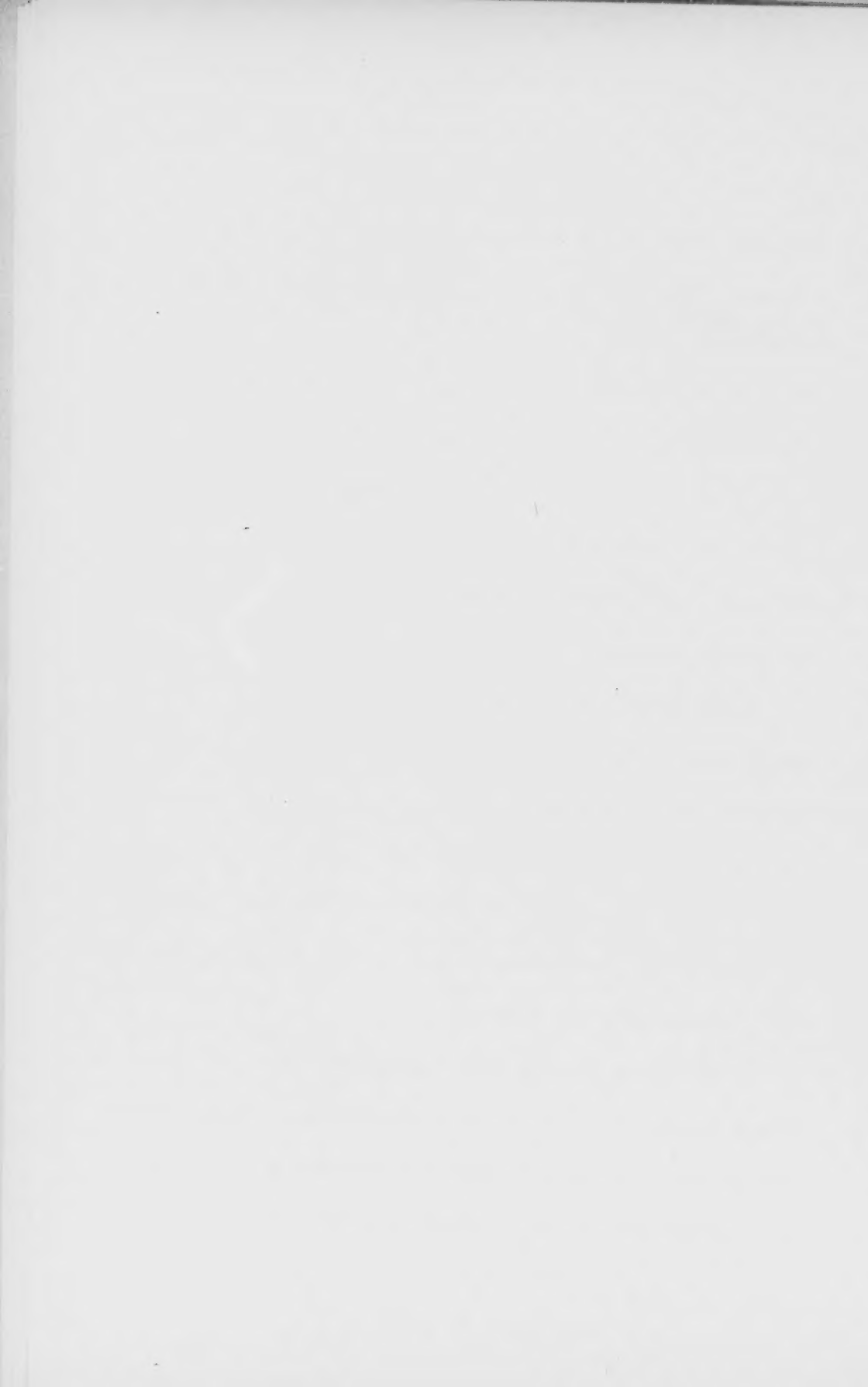
) 207-TUC-ACM

) ORDER

Before: KILKENNY, SNEED and O'SCANNLAIN,
Circuit Judges.

The panel as constituted in the above case has voted to deny the petition for rehearing. Judge O'Scannlain has voted to reject the suggestion for rehearing in banc, and Judges Kilkenny and Sneed have recommended rejection of the suggestion for rehearing in banc.

The full court has been advised of the suggestion for in banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing in banc.



The petition for rehearing is denied
and the suggestion for rehearing in banc
is rejected.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)

Apppellee,) C.A.No.87-1056

v.)

EUGENE H. DAVIS,) D.C. No. 86-

Appellant.) 207-TUC-ACM

) ORDER

Before: KILKENNY, SNEED and U'SCANNLAIN,
Circuit Judges.

This matter is now before the Court on the appellant's petition for rehearing "to be reopened" with suggestion for rehearing in banc, as well as a motion to recall and/or stay the mandate.

The petition for rehearing and suggestion for rehearing in banc have already been denied and rejected by previous Order of this Court filed April 18, 1988. The motion to recall and/or stay the mandate is DENIED.

U. S. CONSTITUTION

ARTICLE III

Section 1.

The Judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2.

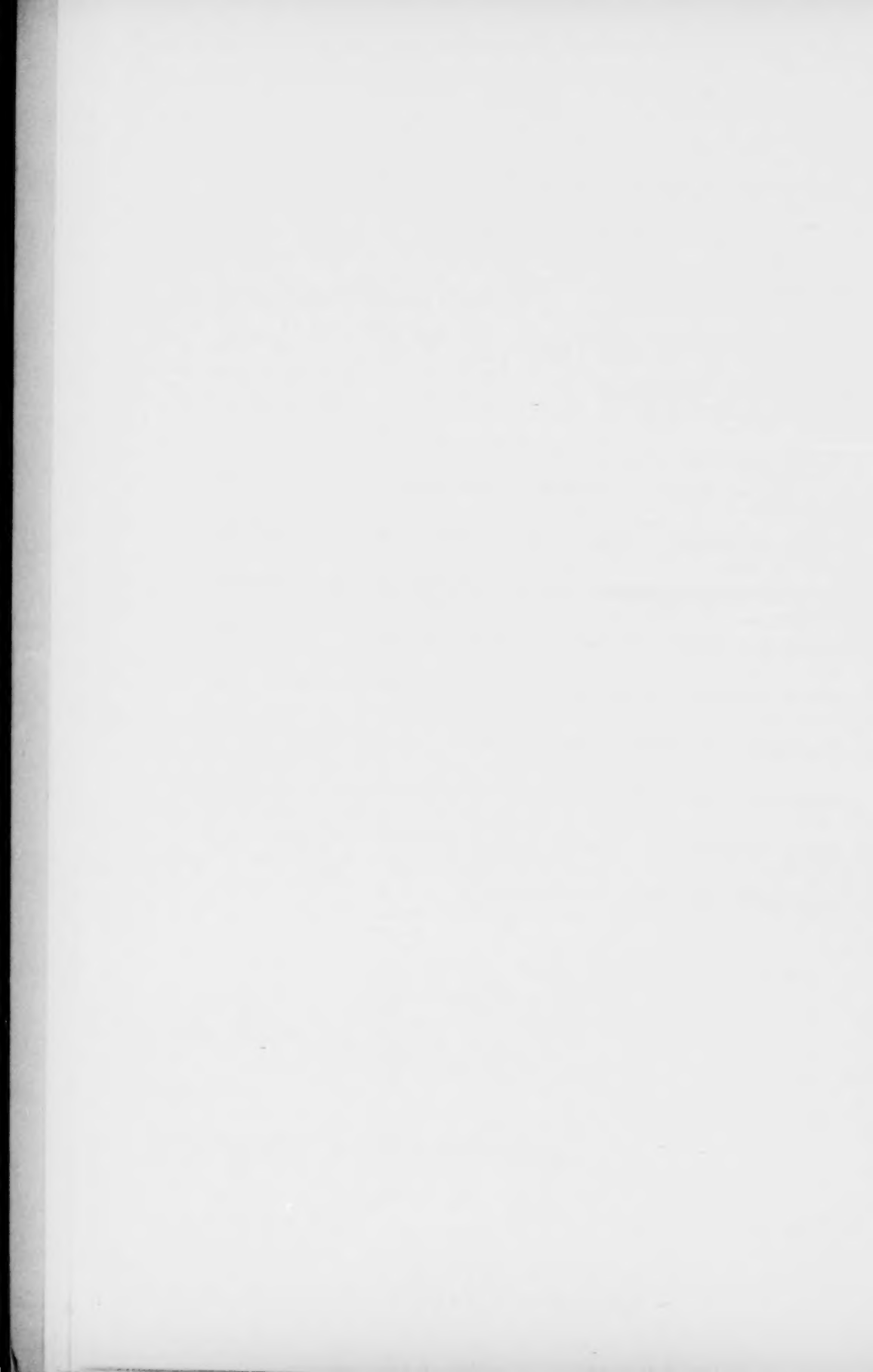
The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens or Subjects.

THE DECLARATION OF INDEPENDENCE

SECOND PARAGRAPH

Sentences 1 and 2

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.



United States Court of Appeals

For the Ninth Circuit

EUGENE H. DAVIS,)
In Propria Persona,)
Accused/Appellant,)
v.) No. 87-1056
United States of America,)
By the American Bar Assoc.,)
Accuser/Appellee.)

APPEAL OF GOVERNMENT'S ASSUMED NEXUS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA TUCSON

ACCUSED/APPELLANT'S BRIEF

EUGENE H. DAVIS
IN PROPRIA PERSONA
7447 No. Camino de Oeste
Tucson, Arizona 85741



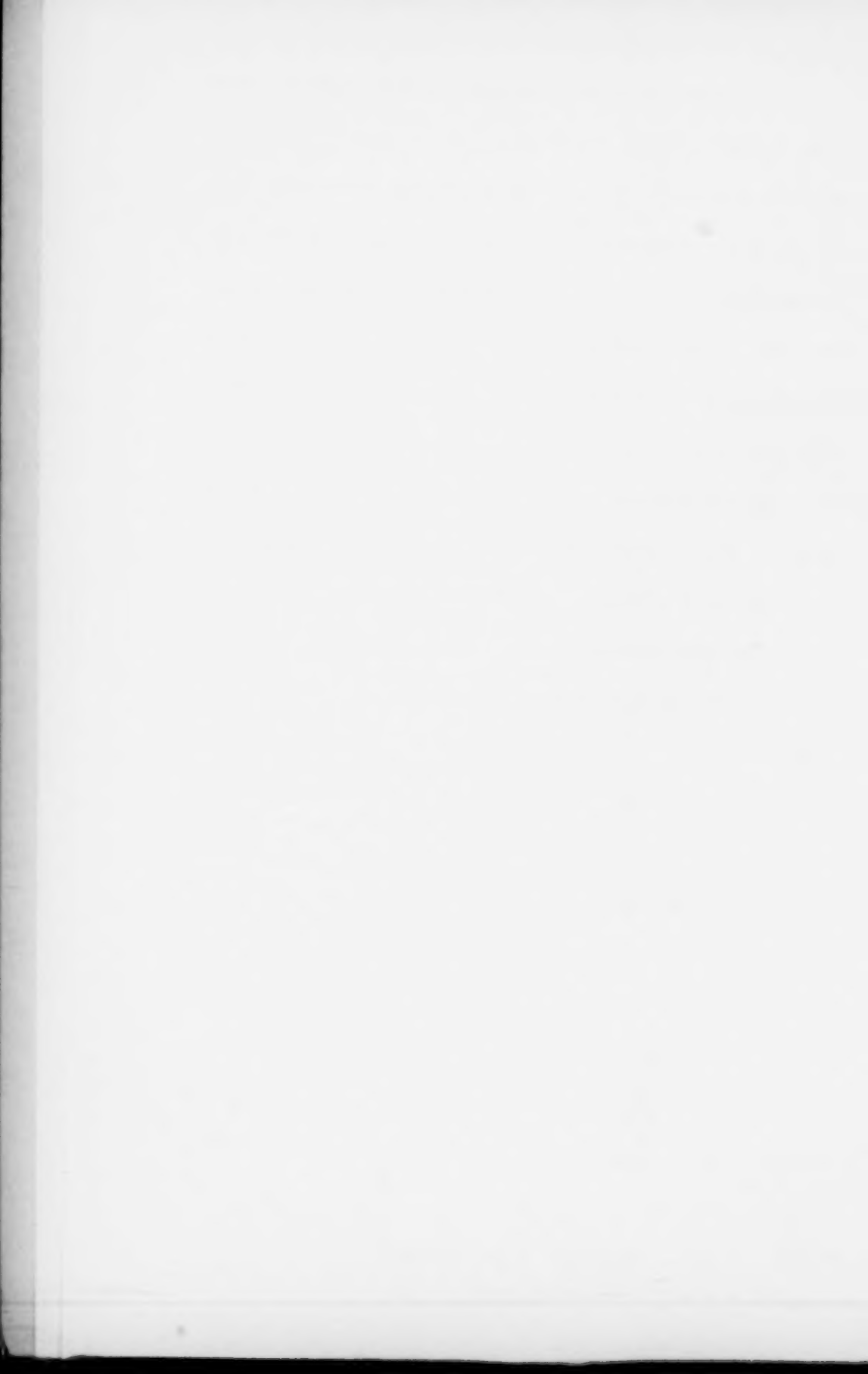
1. The United States Government and the lower Court failed to prove that a NEXUS (jurisdiction) did exist between its self and Eugene H. Davis, a Sovereign Inhabitant by Birth of this great nation.

2. The IRS and the U. S. Attorney did illegally lie and entrap the Accused before the Grand Jury.

On or about 11/24/86 the United States court for the district of Arizona at Tucson did illegally assume jurisdiction by arraignment of the Accused.

On or about 1/6/87 the United States court for the district of Arizona at Tucson did assume jurisdiction and the court did proceed with a trial.

1. The Accused did present to the United States both the Justice and the IRS a statutory waiver pursuant to the United States Uniform Commercial code at Section 1-107 delivered according to Section 1-201(14). pursuant to 28 Am Jur 2d.



Section 169. (See Attachment (1)) An Inhabitant by birth Elector/Legislator, not subject to government's NEXUS.

No one is bound to obey an unconstitutional law, and no Courts are bound to enforce it. The 14th Amendment breached the Sovereign Rights of the People of the United States of America, a Republic, and by its very existance, voided the Constitution in part or in whole removing the People from their Original and Superior Jurisdiction of the Real Property Law of Nature to citizens subject to the jurisdiction thereof. (the 14th Amendment)

The Accused did Challenge the government (IRS) and the lower Court twenty two (22) times at six (6) hearings (see the following transcripts);

Nov. 13, 1986, before Magistrate Raymond T. Terlizzi:

Page 1 line 11 thru 13 and line 16

thru 19

Page 2 Line 11 thru 14 and line 22
thru 24

Page 3 Line 7 thru 10

Nov. 13, 1986, before Judge Alfredo C.
Marquez:

Page 3 Line 8 thru 12

Nov. 24, 1986, before Judge Alfredo C.
Marquez:

Page 2 Line 18 thru 25

Page 3 Line 1

Page 4 Line 2 thru 25

Page 5 Line 1 thru 18

Page 6 Line 12 thru 24

Page 7 Line 23 thru 25

Page 8 Line 1 thru 4

Dec. 22, 1986, before Judge Alfredo C.
Marquez:

Page 3 Line 15 thru 20

Page 5 Line 1 thru 15

Page 7 Line 24 thru 25

Page 8 Line 1 thru 9

Page 10 Line 4 thru 8

Jan. 6, 1987, before Judge Alfredo C.

Marquez:

Page 1 Line 6 thru 25

Page 2 Line 1 thru 25

Page 3 Line 1 thru 5

Page 5 Line 22 thru 25

Page 6 Line 1 thru 25

Page 7 Line 1 thru 13

Page 8 Line 7 thru 19

Feb. 23, 1987, before Judge Alfredo C.

Marquez:

Page 3 Line 17 thru 25

Page 4 line 1 thru 6

Page 4 Line 15 thru 19

Page 5 Line 1 thru 6

Page 6 Line 5 thru 15

Page 10 Line 1 thru 25

Page 11 Line 1 thru 7

Page 19 Line 12 thru 19

In all of the above instant challenges
the lower Court continued to assume an



illegal jurisdiction without any given authority but I got it. This Accused did inform the lower Court each time that it could not proceed without proof of a NEXUS, and that as a servants court it could never have jurisdiction over the Sovereignty of this great country.

This Court, in United States v. Studley, did not entertain the material which is being presented in this brief.



United States Court of Appeals

For the Ninth Circuit

EUGENE H. DAVIS,)

In Propria Persona,)

Accused/Appellant,)

v.) No.87-1056

United States of America,)

By the American Bar Assoc.,)

Accuser/Appellee.)

APPEAL OF GOVERNMENT'S ASSUMED NEXUS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA TUCSON

ACCUSED/APPELLANT'S REPLY BRIEF

EUGENE H. DAVIS
IN PROPRIA PERSONA
7447 No. Camino de Oeste
Tucson, Arizona 85741



1. The United States Government and the lower Court failed to prove that a NEXUS (jurisdiction) did exist between its self and Eugene H. Davis, a Sovereign Inhabitant by Birth of this great nation.

2. The IRS and the U. S. Attorney did illegally lie and entrap the Accused before the Grand Jury.

On or about 11/24/86 the United States court for the district of Arizona at Tucson did illegally assume jurisdiction by arraignment of the Accused.

On or about 1/6/87 the United States court for the district of Arizona at Tucson did assume jurisdiction and the court did proceed with a trial.

1. The Accused did present to the United States both the Justice and the IRS a statutory waiver pursuant to the United States Uniform Commercial code at Section 1-107 delivered according to Section 1-201(14). pursuant to 28 Am Jur 2d.



BLACK'S LAW
DICTIONARY
FIFTH EDITION

HEARING DE NOVO:

Generally, a new hearing or a hearing for the second time, contemplating an entire trial in same manner in which matter was originally heard and a review of previous hearing. On hearing "de novo" court hears matter as court of original and not appellate jurisdiction. Collier & Wallis v. Astor, 9 Cal.2d 202, 70 P.2d 171, 173.



TRIAL TRANSCRIPT

February 10, 1987

Before Judge Alfredo

C. Marquez

No. CR-86-207-TUC-ACM

P R O C E E D I N G S

THE COURT: This is the time set for the trial in United States versus Eugene H. Davis.

Mr. Davis would you come forward and take a seat at the defense counsel's table.

MR. DAVIS: Your Honor, I am present in the courtroom today because as a condition to remaining free instead of being caged the Court compelled me to sign a promise to appear at each scheduled appearance. I have kept that promise faithfully for the sole purpose of challenging the in persona



jurisdiction of the Court because I am convinced that my status as a preamble citizen rather than a 14th Amendment citizen prevents my person from being subjected to the laws and jurisdiction of the maritime, law of nations, Roman civil law court unless my accuser can provide proof that a required relationship nexus when the allegation of itself implies a charge of failed specific performance necessitating a initial agreement to so perform in return for receipt of certain privileges or franchises.

I have asked repeatedly for the prosecution to provide this proof.

I have asked repeatedly for the Court to assert and prove jurisdiction on the record by showing wherein the authority lies for even Congress to create a relationship from a non-relationship through acts of legislation without my knowing and willing consent.



These requests have gone unanswered, Your Honor. Indeed the record clearly shows that the question of status, which forms the basis of the jurisdictional challenge, has been resolutely avoided in past proceedings.

Today, this court, of its own admission, intends to proceed to trial. This act will completely negate my jurisdictional challenge for the remainder of the proceedings before this court and compel me to endure the rigors of a trial and possible incarceration, and to be branded as a criminal pending a lengthy appeal process to resolve the very question which should have been answered in this court.

TRIAL TRANSCRIPT

February 23, 1987

Before Judge Alfredo

C. Marquez



P R O C E E D I N G S

THE DEFENDANT: I have written up some of my objections here. Can you hear me all right?

THE COURT: Sure.

THE DEFENDANT: On page 1, under citizenship, the defendant was born a citizen of Arizona and therefore is a preamble citizen of the United States by virtue of inheritance of his birthright as a member of posterity, and not one whose rights emanate from or through the Fourteenth Amendment.

I believe, you know, just putting down U.S. citizen, is not quite clarifying enough.

And on the matter of the social security number, Your Honor, the defendant has revoked and rescinded his social

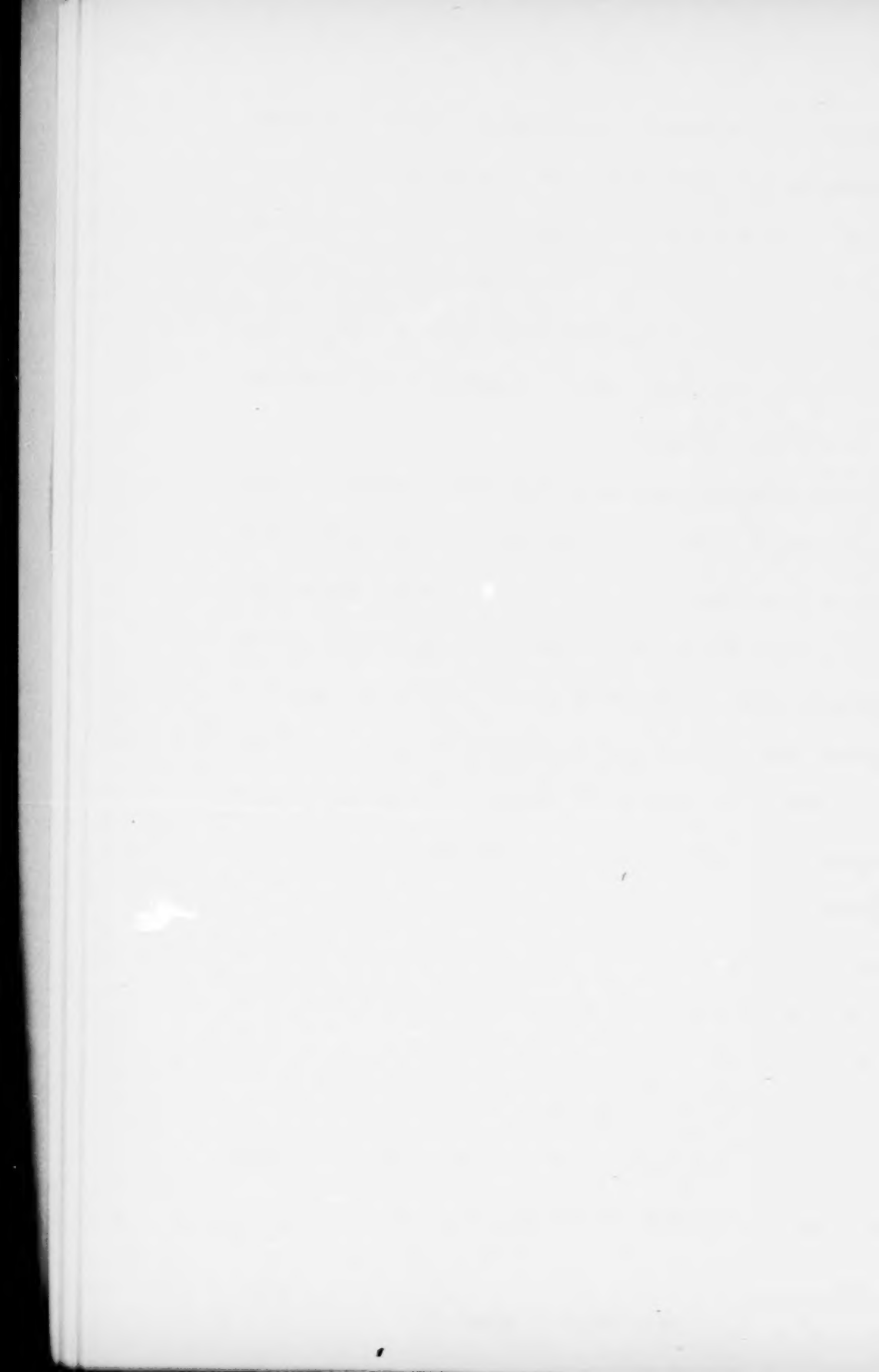


security number contract and number because of constructive fraud used against him. This is based upon but not limited to violation of my rights as shown in the case Tyler v. Stcretary of State and the El Paso Natural Gas Company v. Kaiser Insurance Company.

On the matter of plea, Your honor, the defendant did not refuse to plead, but told the Court it did not have personam (ph) jurisdiction to ask for a plea. The Court then entered a plea of not guilty over the defendant's objection.

Now, if you will turn to page 3, Your Honor, on paragraph 1, the defendant does deny his role in the instant offense as enumerated by the I.R.S. report as shown in the letter to Judge Marquez and the evidence at trial.

Page 5, Your Honor, on paragraph 1, the same applies here as applies to the first paragraph of page 3.

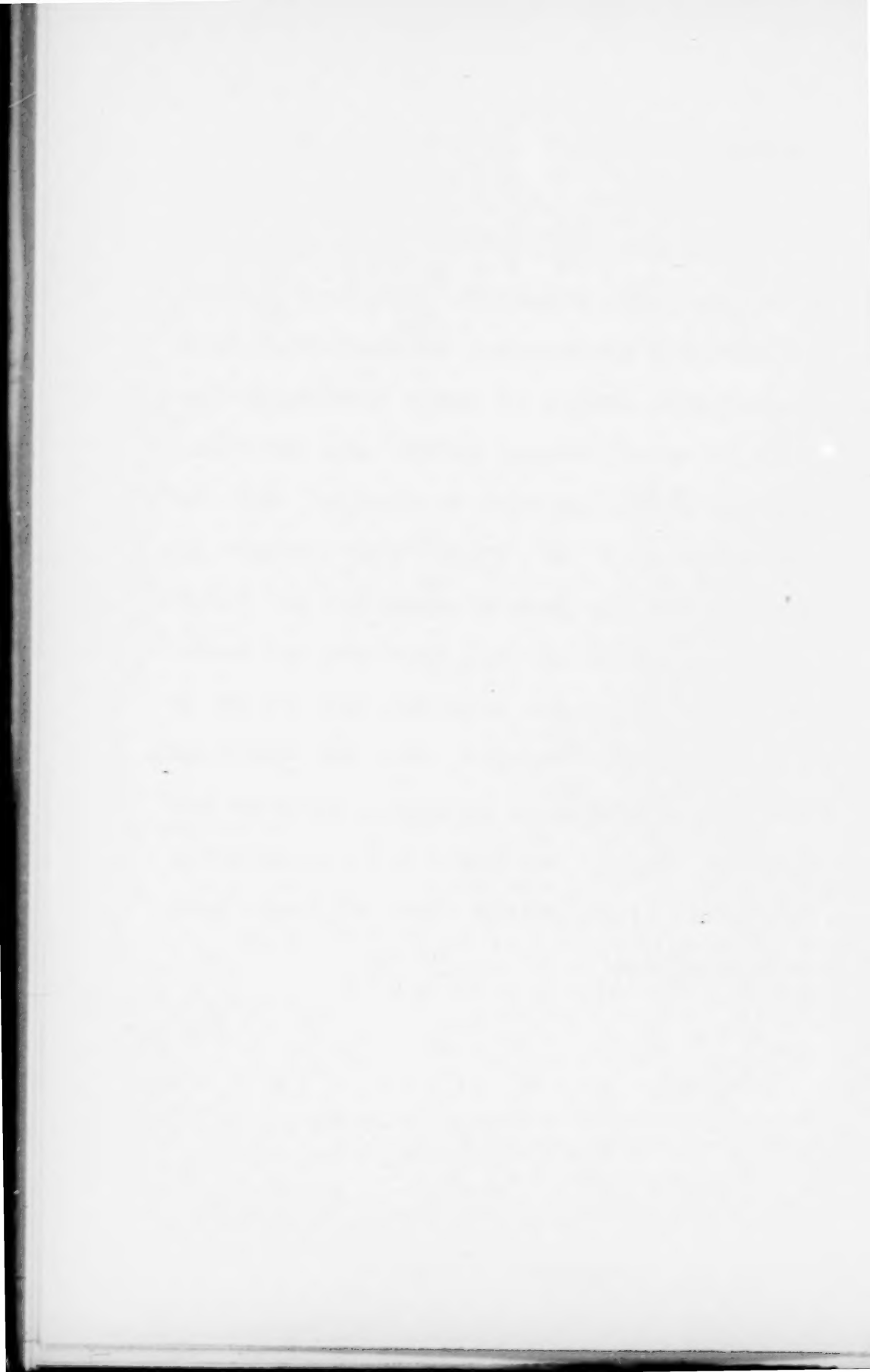


Paragraph 2, I object to the term "financial obligation to the Internal Revenue Service". The defendant maintains thatt he has no obligations, as evidenced by this 24-page affidavit, which I hereby make a part of these proceedings, that the U.S. Attorney has had since January of 1986, proof of which is attached here for the Court.



AMENDMENT ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; no shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.



DUCKET NO 87-1056
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EUGENE H. DAVIS,)
Defendant - Appellant,) C.A. No.87-1056
v.)
United States of America,) D.C. No.86-
Plaintiff - Appellees.) 207-TUC-ACM

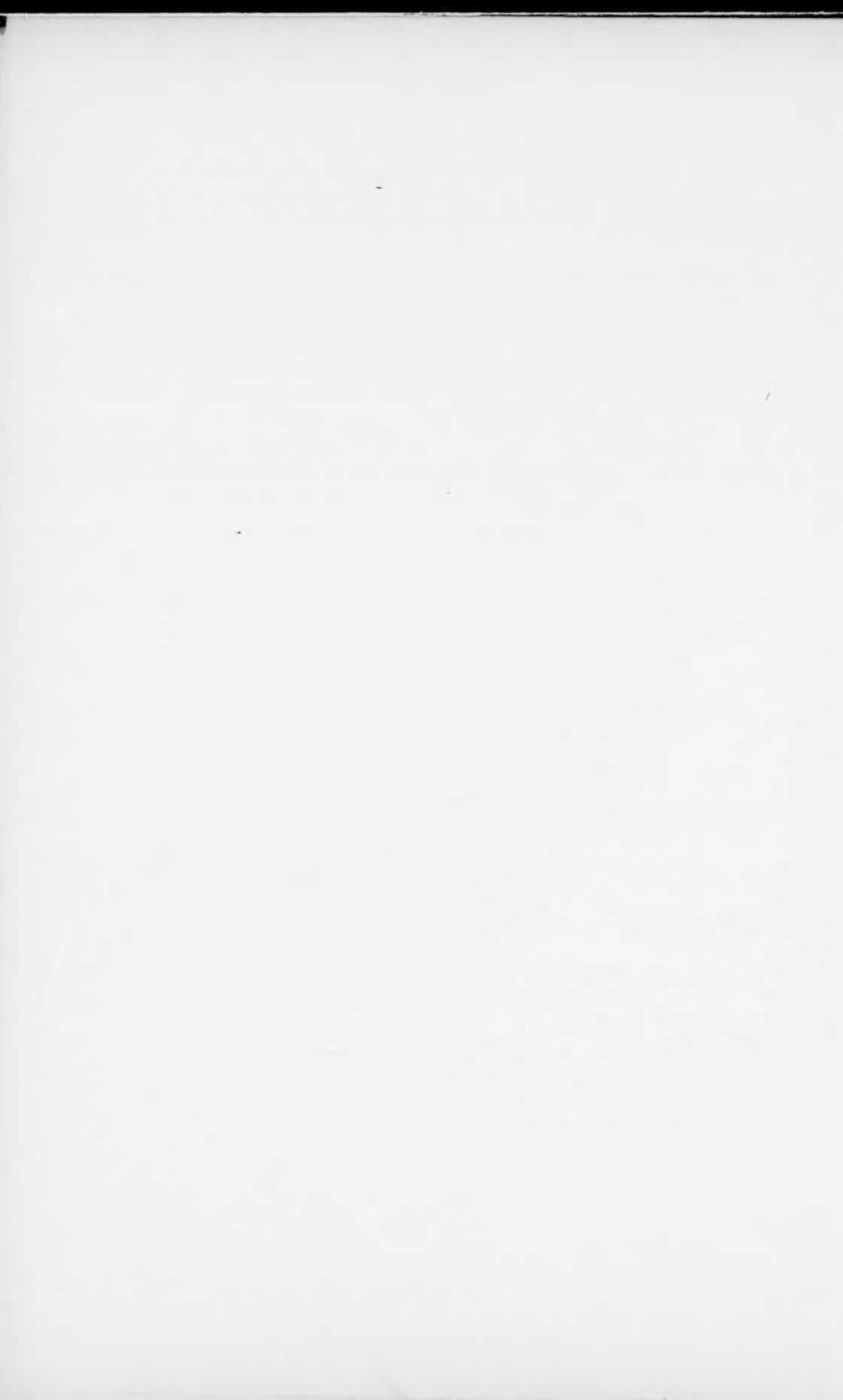
PETITION OF EUGENE H. DAVIS FOR REHEARING
TO BE REOPENED WITH SUGGESTION
FOR REHEARING EN BANC

-- oOo --
APPEAL FROM THE UNITED STATES DISTRICT
COURT
FOR THE DISTRICT OF ARIZONA

-- oUo --
Honorable ALFREDO C. MARQUEZ, District
Judge
-- oOo --

APPEARANCE:

For Plaintiff/Appellant: EUGENE H. DAVIS
7447 N. Camino
de Oeste
Tucson, Az. 85741



Appellant contends that after a reasonable and studied judgment, a rehearing *en banc* is warranted in order to secure and maintain uniformity of decision in this Court.

The Decision rendered by the panel on 10th February, 1988 in the instant case, was contrary to existing law within this Circuit and contrary to decisions of the United States Supreme Court. Additionally, the panel overlooked the meritorious issues presented involving questions of exceptional importance which would affect future cases within this Circuit.

Specifically, Appellant contends on appeal that he was denied Due process of law and that was held over in this Court by the decisions of the panel.

The grounds on which this petition are brought are as follows:

FIRST: This Court's statement and



analysis of the questions presented on appeal as reflected in the MEMORANDUM of 10th February, 1988, overlooked the questions presented for review which were raised by Appellant's BRIEF and SUPPLEMENTAL REPLY BRIEF;

SECOND: This Court's failure to rule on the question of whether or not Appellant had a constitutional right to waive the 14th amendment and the government's right to enforce the same against the Appellant has deprived Appellant of appellate due process;

THIRD: The panel's decision is in conflict with other decisions of this Court;

FOURTH: The panel's decision is in conflict with decisions of the United States Supreme Court;

FIFTH: The panel did not fulfill its obligation to examine the entire record of the trial court to determine whether

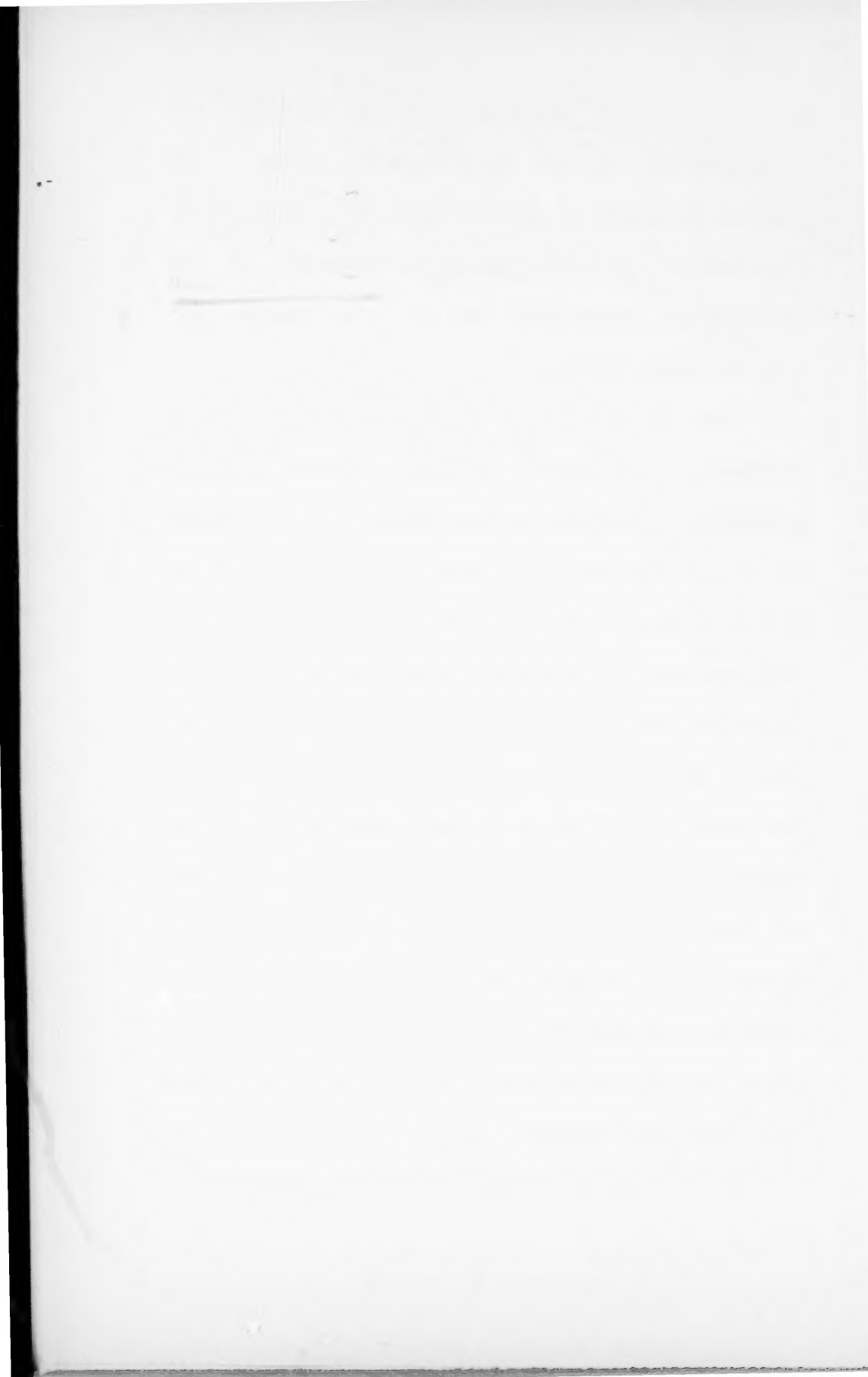
Appellant was unconstitutionally harmed by the denial of all jurisdictional challenges and the dismissal of all paper placed before the trial court.

SIXTH: The Internal Revenue Service, the United States Attorney, the Grand Jury and this Court have one and all ignored and violated Title 26 USC, sections 6303, 6155, 6156, 6203, 6213, 6215, and 6331. (See Exhibit "A"). These sections of Title 26 USC all have one thing in common, that a NOTICE AND DEMAND must be made before any action can be made against a person the IRS assumes a "NEXUS" over. This was not done before the Defendant-Appellant was brought to a criminal trial and has not been to this date. Therefore, you have all committed a grave error because in the reply brief page 10, third para. and page 11, first para. this Court was told of the non-compliance to the above sections of

the IRS Code. There must be a "Notice of Assessment" a US Government form and within 60 days from the date of "Notice of Assessment" a "Notice and Demand" a US Government form must be in the hands of the accused person.

The Panel did not address the contentions and issues which were presented dealing with Appellant's right to waive any part of the U.S. Constitution and its uses against him. They also did not address where they and the court below assumed they could have jurisdiction over him. He knows that the IRS assumes that he had a bank account and that the signature card he may signed is the proof of jurisdiction in the court. This is in error for the government could not produce said signature card. Such rulings by the Panel denigrates the right for any fair and just decisions.

Mr. Justice Frankfurter, in Johnson v.



United States, 318 U.S. 189, 202, 63 S.Ct. 549, 555, 87 L.Ed. 704 (1943) stated: "In reviewing criminal cases it is particularly important for appellate courts to relive the whole trial imaginatively and not to extract from episodes in isolation abstract questions of evidence and procedure."

The "plain error" standard should have been applied by the Panel in determining the issues presented on appeal. The Panel was empowered to notice "plain errors or defects" affecting Appellant's substantial rights even if they were not brought to the attention of the Court. Federal Rules of Criminal Procedure, Rule 52(b); *Braswell v. United States* 200 F.2d 597 (5th Cir. 1952).

The "plain error" rule implies an exceptional situation involving serious deficiencies which affect the fairness, integrity, or public reputation of the



judicial proceedings or which constitute obvious error. This strict standard is necessary in order to promote efficient judicial administration.

The fundamental demands of due process will frequently prove to be an inconvenience to trial courts and to trial counsel. Our Founding Fathers rejected efficiency as the polestar for our nation's criminal justice system. Instead, "due process" is the hallmark we have inherited and must preserve for criminal trials. Due process demands that Appellant not be relegated to the role of an unnecessary bystander to a critical point in his criminal trial. "While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators." United States ex rel Williams v. Twomey, 510 F.2d 634, 640 (7th



Cir. 1975) certiorari denied sub nom
Sielauff v. Williams, 423 U.S. 876, 46
L.Ed.2d 109, 96 S.Ct. 148 (1975)

4. The Panel's Statement And Analysis
Of The Questions Presented On
Appeal Overlooked The Questions
Raised By Appellant's Supplemental
Reply Brief

The panel's analysis of Appellant's
waiver of the fourteenth amendment
overlooked the main critical point. In
determining that the case of United States
v. Studley which was a corporate entity
case involving a subject to citizen
pursuant to the fourteenth amendment,
could have any bearing on a non-corporate
entity who had by statute waived the said
amendment (14th) is downright treason
against the Appellant.